



TEXAS SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS

SENATOR FRANK MADLA
CHAIRMAN

May 24, 2001

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OPINION COMMITTEE

RQ-0386-JC

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The Honorable John Cornyn
Office of the Attorney General
300 W. 15th Street
Austin, Texas 78701

FILE # ML 42012-01

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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

2048

Re: Request for Opinion as to the effect of Chapter 245 of the Texas Local Government Code in the conveyance of property

Dear Attorney General Cornyn:

As Chairman of the Senate Committee on Intergovernmental Relations, I respectfully request an Attorney General's Opinion on the following question:

(1) Under current law, is a buyer of a tract of land entitled to the rights and benefits provided to the previous owner under Chapter 245, Local Government Code, if the buyer desires to develop the property in accordance with the same rules and regulations in effect when the previous owner filed the application for the preliminary plat (i.e. the first permit)?

FACTS

Sections 245.002(a) and (b) of Chapter 245 of the Texas Local Government Code provide as follows:

(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the permit is filed.

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits



for a project.

ISSUE

Without any qualifications as to the ownership of property, this statute appears to state that a land development project must be reviewed in accordance with the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect when the application for the first permit is filed. Section 245.001 defines "project" as "an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor". *Id.* at 245.001. This definition is also set forth without any qualification as to the ownership, or change in ownership, of property subject to the regulatory agency's jurisdiction. Further, Section 245.001 of that Chapter defines a "permit" as "a license, certificate, approval, registration, consent, permit, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought." *Id.* Nowhere in the statute is there a qualification as to ownership, or a restriction on the rights granted under Chapter 245 as the result of a conveyance of property.

This office is in possession of a copy of a letter dated August 16, 1999, from the City Attorney of the City of Cedar Park, Texas which addresses the effect of the conveyance of a tract of land on the rights and benefits established under Chapter 245. In that letter, a copy of which is enclosed, the City Attorney states:

"While the present owner of a particular tract may claim the benefit of Chapter 245 for his project, that particular project ends when the owner sells the tract. Any rights a new owner may have under Chapter 245 can arise only after he acquires title to the subject property and makes a permit application. The projects of the former owner and the new owner represent separate endeavors."

The issue at hand is whether a buyer of a tract of land is entitled to the rights and benefits provided to the previous owner under Chapter 245 if the buyer desires to develop the property in accordance with the same rules and regulations in effect when a previous owner filed the application for the preliminary plat (i.e. the first permit). The City Attorney's position seems to state that the rights and benefits terminate upon conveyance of the property. However, the statute does not appear to support his position.

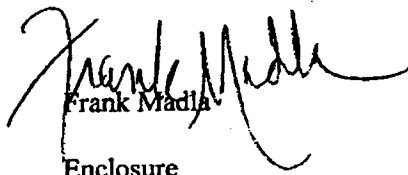
The statute appears to state that the rights and benefits accrue as the result of filing the application for the first permit for a development project and attach to that project regardless of a change in ownership. The statute does not require the rights and benefits to be re-established upon a conveyance. If a purchaser buys a tract of land which has been platted for uses allowed under applicable zoning regulations, and the purchaser desires to develop the property in accordance with the plat and those zoning regulations, it would seem to make sense that the purchaser's development should be reviewed in accordance with the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the preliminary plat was filed.

The City Attorney's interpretation, on the other hand, would have serious effect on property rights throughout the state and, therefore, is of significant public interest. His interpretation would mean that a specific store in a retail development, because of a conveyance in ownership, could be subject to a different set of regulations than other stores in the same retail development even though the land on which the store is built is included in the same plat as the other stores. Taken to an extreme, the City Attorney's position could also mean that the buyer of a single family home would be subject to different rules and regulations than the previous owner. Further, a builder who buys single family lots in blocks could be subject to different regulations even though the lots are all in the same subdivision. Such results would lead to piecemeal planning as developers would be deterred from bringing forward a tract of land for a large-scale development. It would seem that better planning would be promoted if the statute is read literally and there is no effect on the establishment of rights under Chapter 245 as the result of a conveyance.

Because I am not aware of any previous opinions or administrative construction on this issue, I believe an opinion is needed on whether the conveyance of a tract of land terminates any rights or benefits provided by the Legislature under Chapter 245 of the Local Government Code or whether the conveyance of land terminates such rights or benefits and requires a subsequent owner to file an application for a permit in order to establish such rights or benefits.

I would very much appreciate your prompt consideration of this request. Please do not hesitate to contact Jason Anderson on my staff should have questions or need additional information.

Yours truly,


Frank Madla

Enclosure



October 19, 2001

The Honorable Frank Madla
Chair, Committee on
Intergovernmental Relations
Texas State Senate
P. O. Box 12068
Austin, Texas 78711-2068

Opinion No. JC-0425

Re: Whether real property for which an original application for a first permit has been filed remains subject to the orders, regulations, ordinances, rules, expiration dates, or other requirements that were effective at the time of that filing although the property has been conveyed to a different owner (RQ-0386-JC)

Dear Senator Madla:

Section 245.002 of the Local Government Code locks in, for the duration of a real-property “project,” the development regulations in effect when the original application for the first necessary permit is filed. *See* TEX. LOC. GOV’T CODE ANN. § 245.002(a), (b) (Vernon Supp. 2001); *see also Quick v. City of Austin*, 7 S.W.3d 109, 131 (Tex. 1998). Under the statutory definition of the term “project,” it is irrelevant whether the owner who files the original application for the first permit retains the property for the duration of the project or conveys the property. *See* TEX. LOC. GOV’T CODE ANN. § 245.001(3) (Vernon Supp. 2001). You ask a question regarding a tract of land for which an owner has filed an original application for the first necessary permit.¹ If another person purchases that tract of land, you inquire, is the purchaser “entitled to the rights and benefits” that chapter 245 provides to the owner who filed the original application for the first permit, *see* Request Letter, note 1, at 1, and we thus understand you to ask whether the property remains subject to the development regulations in effect when the original application for the first permit was filed despite the conveyance. We conclude that the property remains subject to the development regulations in effect at the time the original application for the first permit was filed, but only if the project remains the same. Whether a project remains the same is a fact question, and this office cannot resolve it. *See, e.g.,* Tex. Att’y Gen. Op. Nos. JC-0032 (1999) at 4 (stating that question of fact is beyond purview of this office); JC-0027 (1999) at 3 (stating the questions of fact cannot be addressed in

¹*See* Letter from Honorable Frank Madla, Chair, Committee on Intergovernmental Relations, Texas Senate, to Honorable John Cornyn, Texas Attorney General (May 24, 2001) (on file with Opinion Committee) [hereinafter Request Letter].

attorney general opinion); JC-0020 (1999) at 2 (stating that investigation and resolution of fact questions cannot be done in opinion process).

Section 245.002 of the Local Government Code specifies that a real-property “project” will be subject to the development regulations in effect when the original application for the first permit required for the project is filed:

(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the permit is filed.

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

....

TEX. LOC. GOV'T CODE ANN. § 245.002(a), (b) (Vernon Supp. 2001). The terms “permit,” “project,” and “regulatory agency” are defined in section 245.001:

(1) “Permit” means a license, certificate, approval, registration, consent, permit, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

....

(3) “Project” means an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.

(4) “Regulatory agency” means the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.

Id. § 245.001. Chapter 245 applies only to a project “in progress on or commenced after September 1, 1997,” *see id.* § 245.003, and certain permits and regulations are exempt from the chapter, *see id.* § 245.004. In addition, a regulatory agency may, by ordinance or regulation, place an expiration date on dormant projects, after which date the project would be subject to current development regulations. *See id.* § 245.005. We understand that the property about which you are concerned is not exempt from chapter 245 and is not dormant. *See generally* Request Letter, *supra* note 1.

With respect to property for which an original application for a first permit has been filed, the property is subject to the development regulations that are effective at the time of the filing (with the exceptions listed in chapter 245 of the Local Government Code) for the duration of the project regardless of any conveyances that may occur during the project. Nothing in chapter 245 suggests that the development regulations to which a property is subject, locked in at the time of filing the original application for the first permit, no longer apply to the property solely because the property has been conveyed to another owner. Section 245.002 facially directs that a property is, for the duration of a project, subject to the development regulations in effect when the original application for the first permit was filed, without mentioning the possibility of a conveyance. *Cf. Quick*, 7 S.W.3d at 131 (examining prior statute, which “provides that if a series of permits is for a project, the ordinances in effect at the time the original application for the first permit is filed shall be the sole basis for consideration of all subsequent permits required for the completion of a project”). Additionally, the term “project,” as defined in section 245.001(3), does not indicate that a project is specific to a person or terminates each time the property is sold. *See* TEX. LOC. GOV’T CODE ANN. § 245.001(3) (Vernon Supp. 2001). A project is an “endeavor,” *see id.*, which is commonly defined as “the action of endeavouring; effort, or pains, directed to attain an object.” V OXFORD ENGLISH DICTIONARY 226 (2d ed. 1989); *see* TEX. GOV’T CODE ANN. § 311.011(a) (Vernon 1998) (requiring us to read statutory words and phrases in context and to construe them according to rules of grammar and common usage); *Thompson v. Corbin*, 137 S.W.2d 157, 159 (Tex. Civ. App.—Texarkana 1940, no writ) (defining verb “endeavor” as “to exert physical and intellectual strength toward the attainment of an object; a systematic or continuous effort”) (quoting *Webster’s New International Dictionary*).

Nevertheless, neither a purchaser nor an owner may alter a project without the possibility of a consequence. If a project is altered by a purchaser, for example, the development regulations are no longer locked in under chapter 245 and current development regulations apply. Whether a particular project has changed so as to lose the protections granted by chapter 245 is a question that must be resolved by the local regulatory agency with jurisdiction in the matter. The statute defines

“regulatory agency” as “the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.” TEX. LOC. GOV’T CODE ANN. § 245.001(4) (Vernon Supp. 2001). Nothing in chapter 245 provides any other body jurisdiction to decide such a question. *Cf. id.* § 245.005 (authorizing regulatory agency to adopt rules placing expiration date on dormant projects). Furthermore, this agency cannot determine whether a project has changed, as the question cannot be resolved without considering fact questions. Fact questions are not amenable to the opinion process. *See, e.g.,* Tex. Att’y Gen. Op. Nos. JC-0032 (1999) at 4 (stating that question of fact is beyond purview of this office); JC-0027 (1999) at 3 (stating the questions of fact cannot be addressed in attorney general opinion); JC-0020 (1999) at 2 (stating that investigation and resolution of fact questions cannot be done in opinion process).

S U M M A R Y

Under section 245.002 of the Local Government Code, property for which an original application for the first development permit has been filed remains subject to the orders, regulations, ordinances, rules, expiration dates, or other requirements that were effective at the time the application was filed for the duration of a project, regardless of any changes in ownership that may occur before the project is completed. *See* TEX. LOC. GOV'T CODE ANN. § 245.002(a), (b) (Vernon Supp. 2001). If a project changes, however, the project becomes subject to current development regulations. *See id.* § 245.001(3) (defining "project"). Whether a particular project has changed so as to lose the protections granted by chapter 245 is a question that must be resolved by the local regulatory agency with jurisdiction in the matter. *See id.* § 245.001(4) (defining "regulatory agency").

Yours very truly,



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